IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 23-11-2007

CORAM

THE HONOURABLE MR.JUSTICE S.PALANIVELU

CRIMINAL REVISION CASE No.1361 OF 2007

Jaleel Ramjan Sha ... Petitioner

-vs-

State,
represented by Inspector of Police,
R-1 Mambalam Police Station,
Chennai,
Crime No.1234/2002. ... Respondent

Revision under Section 397 read with 401 of the Code of Criminal Procedure to call for the records in Cr.M.P.No.80/2007 in SC.No. 140/2006 dated 14.8.2007 on the file of Ist Additional Sessions Judge, Krishnagiri & set aside the same.

For petitioner : Mr.R.Sankara Subbu
For respondent : Mr.A.Saravanan,
Govt.Advocate (Crl.Side).

J U D G M E N T

This revision is filed against the order, dated 14.08.2007, passed in Crl.M.P.No.80 of 2007 in S.C.No.140 of 2006 by the I Additional Sessions Judge, Krishnagiri, whereby the prayer of the petitioner for recalling the P.T.Warrant and releasing him from judicial custody and also for setting aside the remand order was rejected.

2. The facts in a nutshell are as under :

2.1. On 06.07.2002, at about 08.20 p.m., at T.Nagar, Chennai Thiyagaraja Road, in front of Andhra Bank, one advocate, by name, Madanagopal was brutally shot dead by the accused by name Iqbal Mansuri from Madhya Pradesh, in pursuance of a conspiracy among the accused involved in the case. The said advocate was stated to have been defending the offenders, who were booked under the N.D.P.S.Act, in Madhya Pradesh. Totally, seven accused were on the array, who were reported to have hatched a conspiracy to physically eliminate the said Madanagopal. The present petitioner was originally ranked as third accused, who was said to

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have played an important role in hatching and implementing the conspiracy to silence the said Madanagopal.

2.2. On the strength of a complaint lodged by one Arthi, daughter of the said Madanagopal, a case in Crime No.1234 of 2002 came to be registered on the file of the respondent Police station, for the offences under Sections 302 and 120-B IPC read with Section 27 (1) of The Arms Act, read with Section 109 IPC. Charge sheet was laid before the jurisdictional Magistrate Court, namely, XVII Metropolitan Magistrate Court, Chennai, and the case was taken on file in P.R.C.No.21 of 2003. In the meanwhile, the petitioner was released on bail by the said Magistrate.

2.3. As per the orders of the Supreme Court, the case was transferred to the Court of Chief Judicial Magistrate No.I, Krishnagiri, and numbered as P.R.C.No.1 of 2005. There was also a direction by the Apex Court to the effect that the trial of the case should be expedited. Since A-2, A-4 and A-7 were continuously absconding and they could not be secured in spite of NBWs, the case was split up as regards them and the remaining case with the available accused inclusive of A-3, petitioner herein, was committed to the Principal Sessions Court, Krishnagiri, and the same was taken on file in S.C.No.140 of 2006, which has been made over to I Additional Sessions Court, Krishnagiri, and the same is pending disposal.

2.4. While the petitioner was on bail, he was stated to have involved in the commission of offences under Sections 302 and 120-B read with 34 IPC in Maharashtra in Crime No.4 of 2005 on the file of Kolhapur Police Station and he was arrested and remanded to judicial custody.

3. Learned counsel for the petitioner has produced copies of the docket orders in P.R.C.No.1 of 2005 on the file of Chief Judicial Magistrate No.I, Krishnagiri, which show that there were six hearings from 12.07.2005 till 26.12.2005 and the petitioner was absent for four hearings and his absence on those occasions was condoned on the petitions filed on his behalf, under Section 317 Cr.P.C. On 26.12.2005, since he was absent, an NBW was issued against him, which was pending till the hearing on 06.06.2006. On 26.12.2005, the fact of arrest of the petitioner was intimated to the Chief Judicial Magistrate, Krishnagiri, by means of a telegram sent by his advocate in Maharashtra. On 03.01.2006 and 06.01.2006 also, telegrams were sent on behalf of the petitioner, indicating the registration of Crime No.4 of 2005 and his being lodged in Kalamba Central Prison at Kolhapur (Maharashtra) by the jail authority.

4. The respondent filed a report before the Chief Judicial Magistrate, Krishnagiri, stating that since the petitioner was lodged in Kalamba Central Jail, Kolhapur, a P.T.Warrant might be issued to cause production of the accused, namely, the petitioner, before the Court.

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5. Acting upon it, on 07.04.2006, the said Court issued an Official Memo to the Superintendent of Central Prison, Kalamba, for production of the petitioner, stating that in spite of issuance of P.T.Warrant, the petitioner was not produced, thereby requesting to cause his production on 17.04.2006. The respondent also requested the Superintendent of Central Prison for production of the accused. Since the said Official Memo did not yield any result, the Chief Judicial Magistrate, Krishnagiri, issued another Official Memo on 11.05.2006, addressing the Superintendent of Central Prison, Kolhapur, directing him to cause production of the petitioner on 25.05.2006. As the petitioner was not produced on the said date also, the said Court again issued another Official Memo on 25.05.2006 to the said Superintendent of Central Prison, to produce the accused on 06.06.2006. Ultimately, on 06.06.2006, the petitioner was produced before the Chief Judicial Magistrate, Krishnagiri, who remanded him till 12.06.2006, and from the said date, the petitioner has been in jail.

6. Learned counsel for the petitioner would argue in vehemence that the committal Court had erred in remanding the petitioner to custody on 06.06.2006, though he was on bail. It is the backbone of his contention that when the bail granted to him was not cancelled by a judicial order, remanding him to custody on other circumstance is alien to law.

7. The matter with reference to the subsequent involvement of the petitioner in another case in Crime No.4 of 2005 on the file of Kolhapur Police Station was intimated to the Chief Judicial Magistrate, who, in turn, directed for production of the petitioner before the Court, by issuing a P.T.Warrant, on the strength of which the petitioner was produced before the said Court and remanded. Hence, it is to be seen, whether the order of remand by the Chief Judicial Magistrate is legally valid ?

8. Pertinent it is to state that the petitioner moved this Court by filing H.C.P.889 of 2007, for his physical production before the Court, in which a Division Bench of this Court on 31.07.2007 observed as follows :

> "3.The learned counsel for the petitioner has submitted that the petitioner has filed an application on 04.04.2007 for recalling the Non-Bailable Warrant, which is yet to be disposed of by the I Additional District Judge, Krishnagiri. Subsequently, that Non-Bailable Warrant was converted as P.T.Warrant.
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> 4.Without expressing any opinion on the merits of the contentions raised by both parties, we direct the I Additional District Judge, Krishnagiri, to

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consider and dispose of such application in accordance with law as expeditiously as possible, preferably within a period of two weeks from the date of communication of the present order."

9. As already stated, the petitioner filed Criminal M.P.No.80 of 2007 in S.C.No.140 of 2006 for recalling the P.T.Warrant, dated 09.02.2006, and to release him from judicial custody and also to set aside the remand order, dated 06.06.2006.

10. After hearing both sides, the I Additional Sessions Judge dismissed the petition on 14.08.2007. He observed in his order that when the accused was produced before the committal Court and the said Court remanded him to judicial custody, automatically, the P.T.Warrant ceased to exist and once an NBW was issued and subsequently the accused was arrested and remanded, the bail already granted stood cancelled automatically, because he committed breach of his undertaking executed at the time of his being released on bail. The Additional Sessions Judge also touched the merits of the case and the nativity of the petitioner i.e. to say, he hailed from Madhya Pradesh and opined that if the prayer was granted and he was released on bail, there was every possibility for him to abscond and as per the directions of the Supreme Court and the Madras High Court, the trial could not be completed expeditiously.

11. Adverting to the above said factual scenario, learned counsel for the petitioner contends that the Chief Judicial Magistrate was not at all empowered to remand the petitioner nor had he got any authority to extend the remand. In support of his contention, he placed much reliance upon a decision of the Apex Court in Simranjit Singh Mann v. State of Bihar, 1988 L.W. (Crl.) 304, wherein it was observed as follows :

"20.....The argument of the learned counsel for the State of Bihar was that the order for release on bail stood extinguished on the remand of the accused to custody under S.309(2) of the Code of Criminal Procedure. There is no substance whatever in this submission. S.309(2) merely enables the Court to remand the accused if in custody. It does not empower the Court to remand the accused if he is on bail. It does not enable the Court to 'cancel bail' as it were. That can only be done under S.437 (5) and 439 (2). When an accused person is granted bail, whether under the proviso to S.167(2) or under the provisions of Chapter 33 the only way the bail may be cancelled is to proceed under S.437 (5) or S.439 (2)."

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12. Learned counsel for the petitioner also garnered support from a decision of this Court in Appu @ Santhanakumar and others v. State and others, 2004 (1) T.N.L.R.599 (Mad), in which it was held as under :

> "13....The circumstances under which a bail can be cancelled have been set out in Sanjay Gandhi's case and subsequent pronouncement by the Supreme Court. Therefore, the order passed under Section 272 Cr.P.C. pursuant to which a P.T.Warrant is issued can, by no stretch of imagination, supersede an order of bail granted to the accused. That is not the intent and purpose of a P.T.Warrant, which is purely a temporary order (directing the production of an accused to answer a charge or to give evidence etc. as contemplated under Section 267 Cr.P.C.). Therefore, merely because the accused is remanded to custody, when produced under a P.T.Warrant, that he should again seek bail in the Court of first instance, is against the provisions of law."

13. A perusal of the letters addressed by the Chief Judicial Magistrate, Krishnagiri, to the Superintendent of Central Prison, Kalamba, and the communications of the respondent on the basis of the letters of the said Court to the Superintendent would go to show that the P.T.Warrant was issued by the Chief Judicial Magistrate Court as early as 09.02.2006 and, in spite of which, the petitioner was not produced before the Court for various reasons.

14. Though on 26.12.2005 an NBW was issued against the petitioner on account of his absence before the Court, when the Court learnt that he was arrested in some other case, after issuance of P.T.Warrant, the it should have been conscious enough to pass orders on every hearing to the effect that P.T.Warrant was in process for causing production of the petitioner. But, even after 09.02.2006, for the hearings, it had been mentioned in the docket orders that NBW was pending against the petitioner also. After 09.02.2006, the case was taken up for hearing on many occasions on 20.02.2006, 06.03.2006, 20.03.2006, 03.04.2006, 17.04.2006, 27.04.2006, 11.05.2006, 25.05.2006 and 05.06.2006. For the said hearings, the docket orders go the effect that NBW was pending against the petitioner, which shows that neither the Presiding Officer nor the Court staff was diligent enough to record the pending process of P.T.Warrant. In other words, it could be stated that the entire docket orders do not show that P.T.Warrant was issued on 09.02.2006, which was pending till 06.06.2006. Had they been careful enough, they might have avoided writing "NBW pending".

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15. As a mater of fact, the bail granted to the petitioner has not been cancelled by any means. The then Chief Judicial Magistrate, Krishnagiri, has miserably failed to notice that the NBW should not have been allowed to continue after 09.02.2006. On the hearings following 09.02.2006, the Court should have mentioned about the pendency of P.T.Warrant, instead of NBW. When it was brought to the knowledge of the Court that the petitioner/accused was unable to attend the Court on the date of hearing, not on account of his inability but due to the reason of his being arrested and lodged in prison for some other case, it should have either recalled the Non Bailable Warrant or made a direction to the police not to execute it. Without doing so, the Court acted in such a way, which has caused prejudice to the petitioner. The fact of issuance of P.T.Warrant on 09.02.2006 should have been taken into consideration by the Court during the hearings on relevant dates in the month of February,2006. After issuance of P.T.Warrant, the continuance of NBW could not be justified. As laid down in the above said decision of the Supreme Court, when the bail granted to the accused was in existence, remanding him while he was produced on P.T.Warrant is not legally sustainable.

16. Learned Government Advocate (Criminal Side) would contend on behalf of the respondent that the petitioner is a hardcore criminal and if he be released, his presence could not be secured in future.

17. However, the fact remains that even though the petitioner was released on bail by the XVII Metropolitan Magistrate, Chennai, even after the transfer of case to the Court of Chief Judicial Magistrate No.I, Krishnagiri, he had been regularly appearing before the said Court and even as he was absent for some hearings, his absence was condoned by the Court, on the petitions promptly filed on his behalf, under Section 317 Cr.P.C.

18. For the foregoing reasons, the revision is allowed and the petitioner is directed to be released from judicial custody, if he is not required in any other case. The I Additional Sessions Judge, Krishnagiri, is directed to expedite the trial, as directed by the Apex Court.
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Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1.The Ist Additional Sessions Judge, Krishnagiri.
2. -do- Thro the Principal Sessions Judge, Dharmapuri District.
3. The Inspector of Police,R1, Police Station, Chennai.
4. The Public Prosecutor, High Court, Chennai

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+ One cc to Mr. R. Sankarasubbu, Advocate SR 69730
KU (co)
sg 04/12/07

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